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EXAMINER

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/662,398  
Filing Date: September 14, 2000  
Appellant(s): HARRIS, WILLIAM F.

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Guy R. Gosnell  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 30, 2006, appealing from the Office action  
mailed May 12, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2002/0072984                      ROTHMAN ET AL.                      6-2002

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims. The ground(s) for rejection are reproduced below from the Final Office Action, mailed May 12, 2005, and are provided here for the convenience of both the Appellant and the Board of Patent Appeals:

***Claim Rejections - 35 U.S.C. § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 58-76 are rejected under 35 U.S.C. 102(e)(1) as being anticipated by Rothman (U.S. Patent Application Publication 2002/0072984).**

Referring to claim 58. Rothman discloses a server system for generating an order for a product, comprising:

- a receiver component that receives (¶0066 – note that the receiver component is comprised in part by the transaction database), on behalf of a manufacturer (¶0042 and ¶0066 – note that the manufacturer is the seller), requests to order a product from a customer (¶0066) and for receiving financial authorization from a distributor (¶¶0066-0067 – note that the financial authorization is the financial account maintained which is accessible for charging), a request including a product code that identifies the product (¶0066) and a customer identification that identifies a customer

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(¶0066), and a financial authorization comprising an acknowledgment from the distributor verifying a customer account even though the request is received by the receiver component in a manner independent of the distributor (¶0066 - note that the acknowledgment is "a credit field for storing an indication of whether the transaction is an online credit transaction completed through the seller's web site") (*see also* Response to Arguments, *supra*);

- a data storage medium storing information for a plurality of products, including a customer price associated with each of the plurality of products (¶0071 - note the medium comprised primarily of the inventory database) (*see also* Response to Arguments, *supra*);
- an order placement component (¶¶0072-0075 - note the component is the transaction process) that retrieves from the data storage medium information for the identified product (¶0073) and that uses the retrieved information to place an order from the manufacturer of the identified product (¶0075) (*see also* Response to Arguments, *supra*); and
- an order fulfillment component that completes a purchase of the product in accordance with the order placed by the order placement component including arrangement for shipping by the manufacturer and billing of the distributor (¶0075) (*see also* Response to Arguments, *supra*).

Referring to claim 59. Rothman further discloses the server system of Claim 58, wherein the customer identification includes an indication of the distributor so as to identify the predetermined pricing function (¶0045).

Referring to claim 60. Rothman further discloses the server system of Claim 58, wherein the customer identification includes a customer account number associated with the distributor (Figure 3 and ¶0066).

Referring to claim 61. Rothman further discloses the server system of Claim 60, wherein the receiver component is further for receiving an account number acknowledgment from the distributor associated with the customer account number so as to identify the predetermined pricing function (¶¶0071, 0079) (*see also* Response to Arguments, *supra*).

Referring to claim 62. Rothman further discloses the server system of Claim 58, wherein the data storage medium further includes pricing information associated with a plurality of distributors, and wherein the predetermined pricing function includes the distributor pricing information of the identified distributor in the customer price (¶0045).

Referring to claim 63. Rothman further discloses the server system of Claim 58, further comprising a commission component (¶0045) that determines a commission and assigns the commission to a manufacturer's representative, where the commission is based on the order, and where the manufacturer's representative is associated with the customer identification (¶¶0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 64. Rothman further discloses the server system of Claim 58, further comprising a commission component (¶0045) that determines a commission and assigns the commission to a manufacturer's representative, where the commission is based on the order, and where the manufacturer's representative is associated with the product (¶¶0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 65. Rothman further discloses the server system of Claim 58, further comprising a commission component (¶0045) that determines a commission and assigns the commission to a manufacturer's representative, where the commission is based on the order, and where the manufacturer's representative is associated with the customer identification and the product (¶¶0080-0082 - note that the transaction database includes the customer identification which can then be used by the manufacturer) (*see also* Response to Arguments, *supra*).

Referring to claim 66. Rothman further discloses the server system of Claim 58, wherein the data storage medium further comprises stored information associating a manufacturer's representative with a plurality of predetermined variables (¶¶0061-0063); and further comprising a commission component that determines a commission and assigns the commission to a manufacturer's representative based on at least one of the plurality of

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predetermined variables, where the commission is based on the customer price (§§0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 67. Rothman further discloses the server system of Claim 66, wherein the plurality of predetermined variables includes at least one of a territory, a distributor, a manufacturer, a commission percentage and the customer identification (§§0061-0063).

Referring to claim 68. Rothman further discloses the server system of Claim 58, wherein the receiver component is in communication via a public access communications network with a site displaying information for the product, and wherein the order is received via the public access network (Figure 1 and §0036).

Referring to claim 69. Rothman further discloses the server system of Claim 58, wherein the receiver component is in communication via a public access communications network with a manufacturer-specific site displaying information for the product, where the manufacturer-specific site primarily displays only products of a single manufacturer, and wherein the order is received via the public access network (§0036).

Referring to claim 70. Rothman discloses a server system for generating an order for a product, comprising:

- a receiver component that receives, on behalf of a manufacturer, requests to order a product from a customer, a request including a product code that identifies the product and a customer identification that identifies a customer (§0066) (*see also* Response to Arguments, *supra*);
- a data storage medium storing information for a plurality of products and storing information for a plurality of agents associated with the product, where the stored product information includes a customer price associated with the product, where the stored agent information includes at least one predetermined variable associated with each of the plurality of agents (Figure 15 and §§0061-0065) (*see also* Response to Arguments, *supra*); and
- a commission component that determines a commission and assigns the commission to one of the plurality of agents based on at least one of the plurality of predetermined variables even though the request is received by the receiver component in a manner independent of the agents and even though the request is fulfilled in a manner independent of the agents (§§0045, 0080-0082) (*see also* Response to Arguments, *supra*).

Referring to claim 71. Rothman further discloses the server system of Claim 70, wherein the predetermined variable includes at least one of a territory, a distributor, a manufacturer, a commission percentage and the customer identification (§§0045, 0080-0082).

Referring to claim 72. Rothman further discloses the server system of Claim 70, wherein the data storage medium further comprises a commission percentage associated with each of the plurality of products, wherein the commission percentage is a rate for calculating the commission, and wherein the commission is based on the commission percentage (§§0045, 0080-0082).

Referring to claim 73. Rothman further discloses the server system of Claim 70, wherein the receiver component further receives a financial authorization that comprises an acknowledgment of the validity of the customer identification from a distributor of the product (Figure 12 and §0066) (*see also* Response to Arguments, *supra*).

Referring to claim 74. Rothman further discloses the server system of Claim 70, further comprising

- an order placement component (Figure 12 and §§0072-0075) that retrieves from the data storage medium information for the identified product and that uses the retrieved information to place an order for the identified customer for the identified products (*see also* Response to Arguments, *supra*); and
- an order fulfillment component that completes a purchase of the product in accordance with the order placed by the order placement component (§0075) (*see also* Response to Arguments, *supra*).

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Referring to claim 75. Rothman further discloses the server system of Claim 70, wherein the receiver component is in communication via a public access communications network with a site displaying information for the product, and wherein the order is received via the public access network (Figure 1 and ¶0036).

Referring to claim 76. Rothman further discloses the server system of Claim 70, wherein the receiver component is in communication via a public access communications network with a manufacturer-specific site displaying information for the product, where the manufacturer-specific site primarily displays only products of a single manufacturer, and wherein the order is received via the public access network (¶0036).

### **(10) Response to Argument**

The applicant argues that Rothman does not teach or suggest the functions performed by at least the receiver component and the order fulfillment component of independent claim 58 and the commission component of independent claim 70 (see AB, pages 7-9). The applicant argues that the Examiner “merely alleges that certain components described by the Rothman ‘984 publication would be capable of performing the functions of the foregoing components,” and that the “Examiner fails to provide the requisite rationale or evidence to support an allegation of inherency as would be required to reject the claims as being anticipated based upon the prior art reference [Rothman] ... that does not describe the functional recitations set forth by the claims.” (See AB, page 7.)

The Examiner disagrees for the following reasons.

Claim 58 is directed to a system, i.e. an apparatus, comprised of the structural limitations of a receiver component, a data storage medium, an order placement component, and an order fulfillment component. Claim 70 is directed to a system, i.e. an apparatus, comprised of the structural limitations of a receiver component, a data storage medium and a commission component. Claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function, *see In re Danly* 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). A claim containing a “recitation with respect to the manner in which a claimed apparatus

is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (Bd. Pat. App. & Inter. 1987). Thus the structural limitations of claims 58 and 70, including a receiver component, a data storage medium, an order placement component, an order fulfillment component interface, and a commission component are disclosed in the Rothman publication.

The Rothman publication teaches a receiver component that is capable of receiving financial authorization from a distributor. The Rothman publication teaches a system wherein the user can authorize payment through the web site and elect to pick up the product at the distributor (page 6, ¶0075). The payment information is then stored in the database and the distributor is notified of the impending sale (page 6, ¶0075). The user may provide payment information to the local distributor at the time she picks up the product (page 6, ¶0075). The distributor can then report the local sale to the central server at periodic intervals and the information can be incorporated into the database (page 6, ¶0079). Furthermore, the payment can be authorized in conjunction with a credit application or financing provided by the seller or through a third party credit provider (pages 6 and 8, ¶¶0075 and 0094). These aspects of the Rothman system show that the receiver in Rothman is capable of receiving financial authorization from a third party, including the distributor, because the receiver is in communication with the distributor and other third parties regarding payment and sale information while the receiver is receiving purchase orders and information from the user. Thus, the Rothman publication anticipates the receiver component.



Applicant argues that Rothman does not teach or suggest “billing of a distributor in any scenario including that in which the manufacturer ships the product as recited by independent claim 58.” (See AB, pages 8-9). However, this limitation is not recited in claim 58. The Rothman publication teaches an order fulfillment component that is capable of fulfilling orders including “arrangement for shipping by the manufacturer and billing of the distributor,” as recited in claim 58. The Rothman publication teaches a system with an order fulfillment component capable of arranging for shipping of the product by the manufacturer (page 6, ¶0075 – “the user is prompted to enter an address to which the product is to be shipped ... The online delivery may be completed by the operator or server or by one of the local distributors”). The Rothman publication further teaches a system wherein distributors can be charged a fee to the operator or seller (page 5, ¶0070) and wherein audits are performed on distributor sales and compensation to the distributors calculated (page 6, ¶¶0080-0081). Thus the fulfillment component of Rothman would be capable of billing the distributor since it can both charge a fee to and compensate the distributor. Thus, the Rothman publication anticipates the fulfillment component.

The Rothman publication teaches a commission component that is capable of determining a commission and assigning a commission to one of many agents even though the request is fulfilled in a manner independent of the agents, as recited in claim 70. The Rothman publication teaches that compensation to the distributors may include monetary payments, commissions, bonuses and/or ownership interests in the seller’s corporation (page 3, ¶0045). The employees of distributors and distributors in Rothman can be compensated based on a ranking of the distributor/employee compared to other distributors and employees participating

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with the seller (page 3, ¶0045). Thus, the commission component is capable of determining a commission and assigning a commission even though the request is fulfilled in a manner independent of the agent because it can assign compensation, i.e. commissions, based on ownership interests and/or ranking, which is independent of whether the request is fulfilled by the distributor. Thus, the Rothman publication anticipates a commission component.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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